UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHNNY BLANDING, Plaintiff, -against- K. MONTANEZ, Brooklyn I Area Office; WASHINGTON SQUARE, Defendants.	1:19-CV-9125 (CM) ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff Johnny Blanding appears *pro se* and brings this action under 42 U.S.C. § 1983. He sues K. Montanez, who appears to be his parole officer, as well as "Washington Square," which the Court understands to be Washington Square Park. He seeks "correct medical treatment" as well as $15,000,000 in damages.

By order dated January 22, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.[1] For the reasons set forth below, the Court dismisses this action.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must

[1] Plaintiff's complaint is captioned for the United States District Court for the Eastern District of New York. Plaintiff filed it in this Court while he resided in the CAMBA Atlantic House Men's Shelter. The Court has learned that Plaintiff is currently held in the Vernon C. Bain Center in the Bronx.

also dismiss a complaint when the Court lacks subject-matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted, emphasis in original). But the "special solicitude" in *pro se* cases, *id*. at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The United States Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Id.* (citing *Twombly*, 550 U.S. at 555). After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.* at 678-79.

BACKGROUND

Plaintiff makes the following allegations: on August 15, 2019, while Plaintiff was in Washington Square Park in Manhattan, an unknown person attacked and injured him. The unknown person "attacked [him] with tools that are owned by city workers that work at" the

park. (ECF 1, at 10.) Because Plaintiff was then hospitalized and had to undergo surgery for his injuries, he was unable to attend a parole appointment.

Plaintiff alleges nothing about Defendant K. Montanez, who appears to be his parole officer.

DISCUSSION

A. Washington Square Park

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law, or a "state actor." *See West v. Atkins*, 487 U.S. 42, 48-49 (1988). "A park is not a 'person' within the meaning of section 1983." *Bowles v. State*, 37 F. Supp. 2d 608, 611 (S.D.N.Y. 1999). The Court therefore dismisses Plaintiff's § 1983 claims against Washington Square Park for failure to state claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

B. K. Montanez

To state a claim under 42 U.S.C. § 1983 against an individual state-actor defendant, a plaintiff must allege facts showing the individual's direct and personal involvement in the alleged constitutional deprivation. *See Spavone v. N.Y. State Dep't of Corr. Serv.*, 719 F.3d 127, 135 (2d Cir. 2013) (quoting *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995)). An individual defendant may not be held liable under § 1983 solely because that defendant employs or supervises a person who violated the plaintiff's rights. *See Iqbal*, 556 U.S. at 676 ("Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior."). An individual can be personally involved in a § 1983 violation if:

> (1) the defendant participated directly in the alleged constitutional violation, (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong, (3) the defendant created a policy or custom under

> which unconstitutional practices occurred, or allowed the continuance of such a policy or custom, (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or (5) the defendant exhibited deliberate indifference to the rights of [the plaintiff] by failing to act on information indicating that unconstitutional acts were occurring.

Colon, 58 F.3d at 873.[2]

Plaintiff asserts that because an unknown person attacked and injured him, and because he was hospitalized thereafter, he was unable to attend a parole appointment. But Plaintiff alleges no facts showing how Defendant Montanez, his parole officer – and the only individual he names as a defendant – violated his federally protected rights. Indeed, he alleges nothing showing that Defendant Montanez had anything to do with the attack or his injuries. The Court therefore dismisses Plaintiff's claims against Defendant Montanez for failure to state a claim on which relief may be granted. *See* § 1915(e)(2)(B)(ii).

C. Leave to amend

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects unless it would be futile to do so. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

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[2] "Although the Supreme Court's decision in [*Iqbal*, 556 U.S. 662] may have heightened the requirements for showing a supervisor's personal involvement with respect to certain constitutional violations," the Second Circuit has not yet examined that issue. *Grullon v. City of New Haven*, 720 F.3d 133, 139 (2d Cir. 2013).

The Court dismisses this action for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: February 4, 2020
New York, New York

COLLEEN McMAHON
Chief United States District Judge